

19A 3542



IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

APPEAL NO: CA/ABJ/CV/66/2026
SUIT NO: FCT/HC/CV/3139/2024

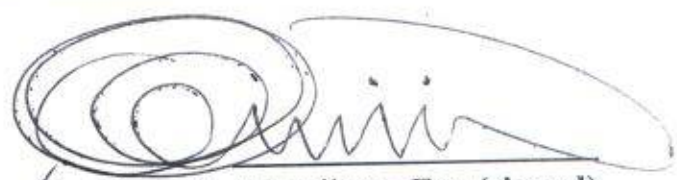
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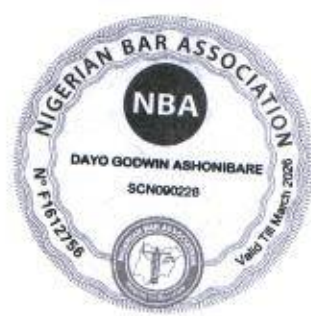
SENATOR TOKUNBO AFIKUYOMI----- APPELLANT

AND

1. PRINCE SAMSON AATAIYERO
 2. THE DEPUTY SHERIFF, FCT HIGH COURT
- } RESPONDENTS

APPELLANT'S BRIEF OF ARGUMENT


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2ND RESPONDENT

THE DEPUTY SHERIFF,

1 Levite Solicitors & Arbitrators



FCT HIGH COURT
Maitama, FCT-Abuja

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APPELLANT'S BRIEF OF ARGUMENT

1.0. INTRODUCTION

- 1.1. This appeal emanates from the High Court of the Federal Capital Territory, Abuja Judicial Division (hereinafter referred to as the "trial court"). It is an appeal against the whole ruling delivered by Hon. Justice C.O. Oba on the 16th day of October, 2025, dismissing an application brought by way of motion on notice in **Suit No: FCT/HC/CV/3139/2024, Motion No: M/3139/2024** dated the 14th March, 2025 and filed on the 18th March, 2025 by the Appellant.
- 1.2. Being dissatisfied with the said decision, the Appellant by Notice of Appeal dated and filed on the 21st October, 2025 appealed against the whole decision to this Honourable Court. The Notice of Appeal contains 7 (Seven) **grounds of appeal.**
- 1.3. Hence, this Appellant's brief of argument in support to this appeal.

2.0. BRIEF STATEMENT OF FACTS.

- 2.1. This appeal arises from the ruling of the High Court of the Federal Capital Territory, Abuja, delivered in respect of a Motion on Notice filed by the Appellant (then Applicant) challenging the premature and unlawful enforcement of a consent judgment entered in Suit No. CV/3139/24 concerning the Appellant's residence at No. 33 Lake Chad Crescent, Maitama, Abuja leased to him by the 1st Respondent.
- 2.2. The Appellant instituted the application by a Motion on Notice dated 14th March, 2025 and filed on 18th March, 2025, seeking orders setting aside the enforcement of a Warrant of Possession dated 3rd March, 2025, restraining further execution, perpetual injunction, and damages. The Appellant's case was that the enforcement was wrongful and in clear violation of the subsisting consent judgment of the court.
- 2.3. The application was anchored on Clause C of the consent judgment, which expressly granted the Appellant a further five (5) months' extension, expiring on 31st July, 2025, where he was unable to vacate the premises by 28th February, 2025. Despite this provision, the 1st Respondent procured and executed a warrant of possession, concealing Clause C from the court to obtain the warrant prematurely. The 1st Respondent while submitting the judgment for enforcement removed the page that contained clause C as seen in the record of appeal.
- 2.4. In support, the Appellant filed a 20-paragraph affidavit deposed to by Seun Awolade, Esq., with three exhibits, a Written Address, and subsequently a 14-paragraph Further and Better Affidavit on 9th April, 2025 with two additional exhibits (D and E) and a Reply on Points of Law and adopted the processes urging the court to grant the application.
- 2.5. The factual basis of the Appellant's case was that the dispute originated from arbitral proceedings commenced by the 1st Respondent at the Uwais Dispute

Resolution Centre, Abuja, which the Appellant protested and declined participation. Although an arbitral award was delivered on 21st June, 2024, the Appellant challenged same by an Originating Motion filed on 8th July, 2024. Before hearing, parties reached a settlement which was entered as a Consent Judgment.

- 2.6. The Appellant informed the 1st Respondent that due to unavoidable circumstances, including the fact that he will be absent from Abuja for the most part of January and February 2025, he could not guarantee vacating the premises by 28th February, 2025 but would do so before 31st July, 2025 in line with Clause C. Nonetheless, on 7th March, 2025, enforcement officers forcibly executed the judgment in his absence based on the certificate of judgment submitted, ejecting his household and throwing out his personal belongings, causing hardship, loss, shock, distress, exposure to insecurity.
- 2.7. In opposition, the 1st Respondent filed a 22-paragraph Counter Affidavit on 25th March, 2025 with six exhibits (A–F), a Written Address, and a 17-paragraph Further Counter Affidavit on 28th May, 2025 with additional authorities, contending that the enforcement was lawful and that Clause C was not automatic.
- 2.8. The 2nd Respondent also opposed the application by a 22-paragraph Counter Affidavit filed on 5th June, 2025, with six exhibits (AM1–AM6) and a Written Address, asserting that the enforcement process was carried out lawfully and without damage to the Appellant's property.
- 2.9. In a ruling dismissing the application, the learned trial Judge held, inter alia, held that Clause C of the consent judgment was not automatic and required documentary proof of the unavoidable situation, and further imputed improper motive to the Appellant. Aggrieved by the said ruling, the Appellant has appealed to this Honourable Court.

3.0. ISSUES FOR DETERMINATION

3.1. The Appellant humbly formulates and submits issues which call for consideration in the determination of this appeal as distilled from the Notice of Appeal and they are as follows:

- i. Whether, having regard to the proper construction of Clause C of the Consent Judgment and the affidavit evidence of the Appellant before the trial court, the learned trial Judge erred in law when he held that Clause C of the Consent Judgment requires documentary evidence of the unavoidable situation or cogent and compelling reason before an extension could be granted. (distilled from Grounds 1,2 and 6 of the Notice of Appeal).
- ii. Whether the learned trial Judge violated the Appellant's right to fair hearing when he upheld the enforcement of the judgment which was done without giving the Appellant prior notice or opportunity to be heard, imputed improper motive to the Appellant, and failed to consider material allegations affecting the enforcement process particularly the removal of Clause C of the Consent Judgment by the Respondent during the enforcement process. (distilled from Grounds 3,4 and 5 of the Notice of Appeal).
- iii. Whether the judgment of the trial court, delivered outside the period stipulated under Section 294(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), is a nullity in law. (distilled from Ground 7 of the Notice of Appeal).

4.0. LEGAL ARGUMENT

4.1. ISSUE 1

Whether, having regard to the proper construction of Clause C of the Consent Judgment and the affidavit evidence of the Appellant before the trial court, the learned trial Judge erred in law when he held that Clause C of the Consent Judgment requires documentary evidence of the unavoidable situation or cogent and compelling reason before an extension could be granted. (distilled from Grounds 1,2 and 6 of the Notice of Appeal).

- 4.1.1. My Lords, Issue One challenges the correctness of the learned trial Judge's interpretation and application of Clause C of the Consent Judgment, particularly the holding that the Appellant was required to produce documentary or extraneous proof of an unavoidable situation or cogent and compelling reason before the extension contemplated by the clause could operate.
- 4.1.2. The whole essence of the trial court's decision regarding this are that:
 - (a) Clause C was not automatic;
 - (b) the Appellant bore the burden of proving compliance with Clause C by concrete and credible documentary evidence; and
 - (c) the Appellant's affidavit evidence and exhibits did not disclose an "unavoidable situation" within the meaning of Clause C.
- 4.1.3. With respect to my noble Lord in the trial court, each of these conclusions is founded on a misconstruction of the consent judgment, a misapplication of the law on affidavit evidence, and an impermissible importation of conditions not agreed by the parties.
- 4.1.4. My Lords, it is apposite, at this stage, to reproduce **Clause C of the Consent Judgment**, which lies at the very heart of this appeal. Clause C provides verbatim as follows:

“That where there arose any unavoidable situation or cogent and compelling reason that made it impracticable for the Applicant to vacate the Property and deliver vacant possession as per these terms of settlement by 28th February, 2025, a further extension of the tenancy for a period not exceeding five (5) months shall be granted to the Applicant, which will expire 31st July, 2025.”

4.1.5. A calm, literal and purposive reading of this clause reveals that the parties clearly contemplated an automatic extension upon the occurrence of the stated condition, without the imposition of any further evidential, procedural or consensual requirements.

4.1.6. My Lords, it is settled beyond argument that a consent judgment is contractual in nature, and once entered by the court, its terms are binding and must be given effect strictly as agreed by the parties. The court has no jurisdiction to rewrite it, add to it, or impose fresh conditions under the guise of interpretation. See **VULCAN GASES LTD v. G.F. IND. A.G. (2001) 9 NWLR (Pt. 719) 610**; where the apex court held that:

“In this regard, it is necessary to point out that a consent judgment or order is as effective in law in respect of all the matters which are therein settled as any other judgment or order arrived at after the matters are fully fought out to the end. As Lord Herschel, L. C. explained in *In Re South America and Mexican Company, Ex Parte Bank of England* (1895) 1 Ch. 37 at 50:-

“The truth is, a judgment by consent is intended to put a stop to litigation between the parties just as much as is a judgment which results from the decision of the court after the matter has been fought out to the end. **And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments,** and were to allow questions

that were really involved in the action to be fought over again in a subsequent action."

Such, therefore, is the binding force of a consent judgment."

4.1.7. Clause C of the consent judgment provides in clear and unambiguous terms:

"That where there arose any unavoidable situation or cogent and compelling reason that made it impracticable for the Applicant to vacate the Property and deliver vacant possession as per these terms of settlement by 28th February, 2025, a further extension of the tenancy for a period not exceeding five (5) months shall be granted to the Applicant, which will expire 31st July, 2025."

4.1.8. The clause does not require prior consent of the 1st Respondent, documentary proof, voice recordings, a fresh agreement, or express approval before it can take effect.

4.1.9. By holding that Clause C "cannot be achieved without a concrete and credible agreement" and that "clear cut evidence" of such agreement must be produced, the learned trial Judge imported a requirement that is completely absent from the clause. With respect, this is a clear violation of the settled principle that where the words of an agreement are plain, they must be given their ordinary and natural meaning. In **SAIPEM CONTRACTING (NIG) LTD & ORS V. FIRS & ORS** (2019) 5 NWLR (Pt. 1664) 78 the Court of Appeal held that "The words used in them ought to be given their grammatical and ordinary meanings. In *The Levy Ex Parte Wultin* (1881) 17 ChD 746 at 751 Jessel M.R. opined: The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical or ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further." Also, on the

cardinal rule of interpretation of document or judgment, the Court of Appeal, in the case of **EDEOGU v. EDEOGU & ORS (2023) LPELR-60801(CA)**, held that:

"It is hornbook law that where a document has to be construed, the intention of the parties must be gathered, in the first place, from the document itself by giving words their plain simple and ordinary grammatical meaning. The first and primary canon of interpretation of documents is that "effect should be given to the literal contents in their ordinary way as they appear on the documents, and anything which does not appear *ex facie* on such documents should NOT be imported into them": **THE NORTHERN ASSURANCE COMPANY LTD v WURAOLA (1969) LPELR-25562(SC)** 1 at 10 - 11 (per Coker, JSC). If the words are express and clear, effect must be given to them and any extraneous enquiry as to what was thought or intended is ruled out. The real question in such a case is not what the parties intended or meant but what is the legal effect of the words used by them. Thus, when the words are unambiguous, the task of interpretation is negligible: this first and primary canon is also the last and judicial enquiry is complete. It is only when there is ambiguity in the language employed in the document that it is permissible to look to the surrounding circumstances to determine what was intended. See **IHUNWO v IHUNWO & ORS (2013) 8 NWLR (PT. 1357) 550**, **NIKA FISHING CO. LTD v LAVINA CORPORATION [2008] 16 NWLR (PT 114) 506**, **ORIENT BANK v BILANTE INT'L LTD [1997] 8 NWLR (PT 515) 37 at 78**, **UNION BANK v NWAOKOLO [1995] 6 NWLR (PT 400) 127**, **ODUYE v NIGERIA AIRWAYS LTD [1987] 2 NWLR (PT. 55) 126 at 139**, **NWANGWU v NZEKWU (1957) 3 FSC 36** and **OLOJA & ORS v GOV, BENUE STATE (2021) LPELR-55634(SC) 1 at 22 (per Oseji, JSC).**"

4.1.10. The learned trial Judge held that Clause C was not automatic and that the Appellant merely “assumed” an extension. We submit with respect that this conclusion is unsustainable. Clause C is conditional but self-executing. Once the condition contemplated by the parties arises namely, the existence of an unavoidable situation or cogent and compelling reason making vacation impracticable—the extension flows by operation of the consent judgment itself, not by further negotiation or approval.

4.1.11. Nigerian courts have consistently recognized that once a condition precedent stipulated in an agreement occurs, the rights flowing therefrom crystallize automatically. This position was established and explained in **TSOKWA OIL MARKETING CO VS BON NIGERIA LTD (2002) 11 NWLR (PT. 777) PG 163**, there it was held thus: “It is trite that once a condition precedent is incorporated into an agreement, that condition precedent must be fulfilled before the effect can flow. However, once the condition precedent is fulfilled or occurred the contract becomes effective and binding”. Also, in **JORSIL LTD v. THE GOVERNOR, NASARAWA STATE & ORS (2025) LPELR-82075(CA)** where it was held that

“It must be further emphasized that where a contract or a right is made contingent upon the happening of a future event, that contingency constitutes a condition precedent. The Supreme Court authoritatively defined this concept in *Atolagbe v. Awuni* (1997) 9 NWLR (Pt. 522) 536, where Ogwuegbu, J.S.C. (dissenting but persuasive) stated: “A condition precedent is one which delays the vesting of a right until the happening of an event.” (P. 118, Para. C; See also *Osborn's Concise Law Dictionary*, 8th ed.) The Court of Appeal followed this line of reasoning in *Panalpina World Transport Holding AG v. Jeidoc Ltd & Anor* (2011) LPELR-4828(CA), where Pemu, J.C.A. observed: “An act that is to be performed before some

right, dependent thereon, accrues, connotes a condition precedent." (P. 27, Para. A)

My noble Lords are also referred to **BEST (NIG.) LTD v. BLACKWOOD HODGE (NIG.) LTD (2011) 5 NWLR (Pt. 1239) 95.**

4.1.12. My Lords, the learned trial Judge fell into grave error when he treated Clause C of the consent judgment as imposing a rigid and evidentially onerous condition precedent not contemplated by the parties and unsupported by the affidavit evidence before the court. The Appellant's positive and unequivocal deposition that he informed the 1st Respondent of his inability to vacate the premises by 28th February, 2025 owing to his prolonged absence in Lagos for most of January and February, 2025 constituted sufficient evidence of the occurrence of the contingency envisaged under Clause C, namely an "unavoidable situation" rendering immediate vacation impracticable. Rather than evaluate this evidence on the balance of probabilities, the learned trial Judge wrongly shifted the evidential burden by insisting on documentary proof or third-party corroboration not stipulated by the consent judgment. More fundamentally, the court erred in law by descending into conjecture when it assumed, without evidential foundation, that the Appellant could have directed another person to vacate the premises on his behalf. That assumption ignored the practical realities attendant to lawful delivery of vacant possession, which involves personal supervision, coordination of household effects, access to the premises, and responsibility for potential loss or damage—matters peculiarly within the Appellant's control and not amenable to casual delegation. It is settled law that courts are not permitted to speculate, assume facts not proved, or substitute conjecture for evidence, and where a condition precedent is contractually framed in general terms, the court must give effect

to it as agreed by the parties without importing artificial requirements or hypothetical alternatives.

4.1.13. It is therefore our submission that by re-engineering Clause C to require documentary proof and by postulating an impracticable substitute course of action not canvassed by any party, the learned trial Judge misconstrued the condition precedent.

4.1.14. My Lords, the learned trial Judge fell into error when he held that the Appellant was required to prove the existence of an unavoidable situation by documentary evidence, voice recordings, or similar materials, failing which the court could not act.

4.1.15. It is trite law that affidavit evidence is evidence. In **ANYAECHE & ANOR v. NDUKA (2017) LPELR-42459(CA)** the court held that "Tobi JCA, AHTW in *Chief Chukwumeka Odumegwu Ojukwu vs Miss Stella Onyeador* (1991) 7 NWLR (pt 203) 286 at 317, defined an affidavit as documentary evidence which the Court can admit in the absence of any unchallenged evidence. In other words, affidavit evidence is a statement of fact which the deponent swears to be true to the best of his knowledge information or belief. See, *Josien Holdings Ltd v. Lornamead Ltd* (1995) 1 NWLR (pt 371) 254 @ 265." Per **HAMMA AKAWU BARKA, JCA (Pp 27 - 27 Paras C - F)**"

4.1.16. In interlocutory and post-judgment applications, facts are proved by affidavit, not oral testimony or documentary corroboration unless the law or the parties' agreement expressly requires otherwise. In **NWEKE v. FRN (2019) LPELR-46946(SC)** the apex court held as follows:

"No motion or application to the Court can be countenanced or held to be competent without an affidavit attached to it. Such an affidavit must of course be duly sworn before an appropriate authority. See *Opobiyi & Anor v*

Muniru (2011) 18 NWLR (pt 1278) 387, Mobil Producing Nig. Unlimited v Monokpo (2003) 18 NWLR (pt .852) 346, Chief of Air Staff v Iyen (2005) 6 NWLR (pt 922) 496 at 546. The depositions in the affidavit in support of a motion is not like pleadings, which if no evidence is led in support is deemed abandoned. Every fact deposed to in an affidavit is akin to evidence given by a party in litigation which a Court can rely upon in taking a decision. This much was held by this Court in B. V. Magnusson v K. Koiki & Ors (1993) LPELR - 1818 (SC) per Kutigi (JSC) (as he then was) on pages 11 - 13 as follows: - "**An application or motion on the other hand is usually supported by an affidavit or affidavits with or without exhibits, depending on the nature of the application.** It is necessary for an applicant to state fully in an affidavit the facts he intends to rely upon in seeking the prayers or order contained in the motion paper because except with the leave of Court, he will not be heard in respect of facts not contained in the affidavit... Affidavit evidence upon which application or motions are largely decided are not the same thing as pleadings in a civil suit which are written statements (and not evidence) generally of facts relied upon by a party to establish his case or his answer to his opponent's case. It is only in exceptional cases for example where there are irreconcilable affidavits from both sides, that oral evidence will be allowed to be led in support of interlocutory application (see Falobi v Falobi (1976) 9 - 10 SC 15, Eboh & Ors v Oki & Ors (1974) 1 SC 179, Uku & Ors v Okumagba & Ors (1974) 3 SC 35) unlike pleadings which will have to be supported by evidence at the trial as stated earlier." My view is that whether evidence is given in Court by a witness after he was sworn or such evidence is deposed to in a sworn affidavit, they are both evidence before the Court. The difference is that the former is oral evidence while the latter is affidavit evidence."

4.1.17. My Lords, a careful and dispassionate examination of the affidavit evidence before the trial court reveals that the Appellant's material deposition was in fact not controverted by the 1st Respondent, and the learned trial Judge erred in holding otherwise. The Appellant positively averred that he informed the 1st Respondent of his inability to vacate the premises by 28th February, 2025 because he would be away in Lagos for most of January and February, 2025. Crucially, the 1st Respondent did not depose that he was never informed of the Appellant's impending trip to Lagos or of his unavailability within the relevant period; rather, his counter-affidavit merely stated that he visited the Appellant to beseech him to vacate the premises by 28th February and that the Appellant assured him he would do so, while also acknowledging the Appellant's trip and absence. The law is settled that a fact is only deemed controverted where it is specifically, unequivocally, and materially denied, and a general narrative that does not directly contradict a positive assertion amounts to an admission by implication. In the present case, both affidavits are reconcilable and point to the same factual matrix—that the Appellant communicated his unavailability due to travel—thereby rendering the trial court's finding of denial perverse and unsupported by the record.

4.1.18. We submit that where affidavit evidence is not in conflict, a court has a duty to act on it, and it is a grave error for the court to manufacture a contradiction where none exists or to resolve an imaginary dispute against a party whose evidence stands unchallenged. There is no rule of law requiring that facts deposed to on oath must be corroborated by documentary evidence before they can be believed. By insisting on such corroboration, the trial court imposed a higher standard of proof than required in civil proceedings, contrary to settled law.

4.1.19. My Lords, while the Appellant accepts that the initial burden of proof lay on him, the learned trial Judge misapplied that principle. The Appellant discharged that burden by placing sworn affidavit evidence before the court explaining the circumstances that made compliance impracticable. The court was duty-bound to evaluate that evidence on the balance of probabilities, not to reject it for lack of documentary embellishment. See **NWEKE v. FRN (SUPRA)**.

4.1.20. The authorities cited by the learned trial Judge on burden of proof do not support the conclusion that affidavit evidence must be supported by documents before it can be credible. With respect, the court conflated weight of evidence with mode of proof, thereby arriving at a perverse conclusion.

4.1.21. My Lords, it is also pertinent that learned trial Judge further erred when he embarked on a subjective redefinition of “unavoidable situation”, limiting it to life-threatening or catastrophic events, and holding that the Appellant’s explanation did not qualify. In **UCHENDU v. STATE (2015) LPELR-25602(CA)** the court held that “A court cannot read extraneous meaning into words used in a document, different from what is stated therein.” Per **ITA GEORGE MBABA, JCA (Pp 27 - 27 Paras F - F)**. Also, in **ODOGWU v. OGOCHUKWU (2021) LPELR-53352(CA)** the court held that “Again words are not to be read into a statute or a document that are not in them. See **EHINDERO v. FRN (2018) 5 NWLR (PT. 1612) 301, 318.**” Per **JOSEPH EYO EKANEM, JCA (Pp 35 - 35 Paras C - F)**.

4.1.22. The parties themselves did not define “unavoidable situation” in such restrictive terms. It is therefore our submission that the court had no jurisdiction to narrow the scope of the clause by judicial fiat. It is settled that a court must not substitute its own perception of fairness for the clear

intention of the parties. My noble Lords are referred to the case of **ASHAYI v. APC & ORS (2023) LPELR-61837(SC)** where the apex court held that **"It is also trite that Courts are not entitled to assume or speculate on anything. It is dangerous and unfair to do."** Often times, it leads to a miscarriage of justice as appears in the instant case. **Ejezie and Anor v. Anuwu and Ors (2008) LPELR-1063 (SC)**, **Adefulu and Ors v. Okulaja and Ors (1996) LPELR-24853 (SC)**, **U.T.B v. Ozoemena (2007) LPELR-3414 (SC)**, **Kode v. Yussuf (2001) LPELR-1695 (SC)**, **Offoboche v. Ogoja LG and Anor (2001) LPELR- 2265 (SC)**, **Archibong and Ors v. Ita and Ors (2004) LPELR-535 (SC).**"(DISSENTING) **Per CHIMA CENTUS NWEZE, JSC (Pp 46 - 46 Paras B - D)**

4.1.23. My Lords, what is even more compelling is that from the record of appeal, it is evident that the page containing Clause C was either removed or not submitted to the 2nd Respondent in the course of applying for enforcement of the judgment. Page 536 specifically from 546, 547, 548 of the record of appeal my lords would see that page 304 to 309 the content of page 307 is completely missing from a similar certificate of judgment in 546 to 548 of the documents submitted for enforcement with the 2nd Respondent for the purported enforce. This omission raises serious concerns regarding the integrity of the submission process and calls into question the propriety of the enforcement sought. It is humbly submitted that if page 307 of the record of appeal is not deliberately removed the Appellant would have not suffer this injustice.

4.1.24. My Lords, additionally to the withholding of the page containing clause C during enforcement we submit with the greatest respect that the learned trial Judge misconstrued Clause C of the consent judgment, wrongly held that it

was not self-executing, imposed an unwarranted requirement for documentary proof, misapplied the burden of proof, and failed to give effect to the clear contractual intention of the parties. These errors occasioned a miscarriage of justice and led to the f. wrongful conclusion that the execution of the consent judgment was not premature.

4.1.25. We therefore respectfully urge this Honourable Court to resolve Issue One in favour of the Appellant, set aside the findings of the trial court on Clause C, and hold that the enforcement of the consent judgment was premature and contrary to its express terms.

4.2. ISSUE 2

Whether the learned trial Judge violated the Appellant's right to fair hearing when he upheld the enforcement of the judgment which was done without giving the Appellant prior notice or opportunity to be heard, imputed improper motive to the Appellant, and failed to consider material allegations affecting the enforcement process particularly the removal of Clause C of the Consent Judgment by the Respondent during the enforcement process. (distilled from Grounds 3,4 and 5 of the Notice of Appeal).

4.2.1. My Lords, the decision of the learned trial Judge is fundamentally vitiated by a clear violation of the Appellant's constitutional right to fair hearing as guaranteed under **Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)** which provides thus:

"In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality."

4.2.2. . Fair hearing is not a technical doctrine but a fundamental condition precedent to the validity of any judicial or quasi-judicial act, and once breached, the entire proceedings, no matter how well conducted otherwise, are rendered a nullity. My Lords are referred to the case of **DANLADI v. DANGIRI & ORS (2014) LPELR-24020(SC)** where my noble Lord **Per KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, JSC** of the Apex Court held that

"There is no doubt that fair hearing is the foundation of any adjudication. It is a rule of natural justice enshrined in Section 36 (1) and (6) of the 1999 Constitution (as amended) that requires that the other side be heard. Any proceedings conducted in violation of a party's right to fair hearing will amount to a nullity, no matter how well conducted. See: *Tukur Vs Govt. of Gongola State* (1989) 9 SCNJ 1; (1989) 4 NWLR (Pt. 117) 517; *Adigun & Ors. Vs A-G. Oyo State & Ors.* (1987) 2 NWLR (Pt. 56) 197; *F.R.N. Vs Akabueze* (2010) 17 NWLR (Pt. 1223) 525 @ 537 E - F; *Victino Fixed Odds Ltd. Vs Ojo & Ors.* (2010) 8 NWLR (Pt.1197) 486 @ 499 - 500 G - B; *J.S.C. Cross River State Vs Young* (2013) 11 NWLR (Pt. 1364) 1 @ 21 F - H. Since it goes to the root of the case, it is an issue that must be considered and resolved before delving into any other issue in the suit." **Per KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, JSC (Pp 83 - 83 Paras B - F).**

4.2.3. My Lords, the Appellant's uncontroverted case before the trial court was that the enforcement of the consent judgment was carried out without prior notice to him and without affording him any opportunity to be heard, notwithstanding the subsistence of Clause C of the consent judgment which regulated the timeline for delivery of possession. After the 1st Respondent's

alleged request and beseech to the Appellant to which the Appellant explained his unavoidable situation, the 1st and 2nd Respondent failed to inform the Appellant of their intention to execute the consent judgment (on the 7th of March, 2025 disregarding the extension stated in CLAUSE C of the consent judgement) and the throwing out the Appellant's properties and effects out of the premises thereby causing the Appellant absolute shock and ridicule and provided in the exhibits before the court.

4.2.4. It is settled law that where a court process or execution will adversely affect a party's civil rights, such party must be given notice and an opportunity to be heard before the enforcement is sanctioned or validated by the court. See LEEDO PRESIDENTIAL MOTEL LTD V. BANK OF THE NORTH LTD & ANOR (1998) LPELR-1775(SC), A.G. RIVERS STATE V. UDE (2006) 17 NWLR (PT. 1008) 436 (SC); DEDUWA V. OKORODUDU (1976) 9-10 SC 329; MILITARY GOV., LAGOS STATE V. ADEYIGA (2012) 5 NWLR (PT. 1293) 291 (CA). By upholding an enforcement carried out in secrecy and surprise, the learned trial Judge effectively endorsed a process that offended the *audi alteram partem* rule, thereby breaching the Appellant's right to fair hearing.

4.2.5. It is therefore our submission that the Appellant ought to have been notified of the intended execution of a warrant of possession against him as this would have afforded the Appellant the right of hearing on the fact that the execution was conducted prematurely and wrongly.

4.2.6. We submit further that the learned trial judge sunk further into error when the 1st Respondent approached his Lordship vide an application to issue a warrant of possession disregarding CLAUSE C of the consent Judgement. The learned trial judge would have summoned the Appellant to verify why he could not vacate the premises as per Clause B before issuing the

warrant of possession. This would have put the Appellant on Notice that Clause C is not applicable to him but the learned trial judge went ahead to issue the warrant of possession without hearing from the Appellant why he could not vacate the premises as per Clause B as stated in the consent Judgement.

4.2.7. The Learned trial Judge in a bid to correct the above in his judgement held that "the mere fact that the Applicant will be in Lagos is not a magic wand to stay in a property..." (page 599 of the records of appeal). The learned trial judge sought to justify the fact that he did not give the Appellant fair hearing by proposing in retrospect that the reason the Appellant gave was not compelling enough. This cannot correct the fact that the Appellant was thrown out of the premises without being heard on why he could not vacate the property as per Clause B.

4.2.8. My Lords, the learned trial Judge also erred when he imputed improper motive to the Appellant by holding that the application "appears to have a colouration of an attempt to get back or retaliate or take revenge" against the 1st Respondent. This finding was made *suo motu*, without any pleading, issue, or evidence supporting such an allegation. It is firmly settled that a court must not attribute bad faith, malice, or improper motive to a party in the absence of credible evidence, as doing so amounts to bias and a denial of fair hearing. In **OKEBATA v. STATE (2013) LPELR-22474(CA)** the court held that:

"It is trite that all Courts of law are duty bound to give critical examination to evidence adduced before them and ensure that the innocent are not punished or the guilty set free. Courts should act on evidence and not on hunches, rumour or speculation so as to ensure that justice in its purest form is administered in the Courts to all and

sundry. See *Onah vs. State* (1985) 3 NWLR (PT 12) 236." **Per UWANI MUSA ABBA AJI, JCA (Pp 46 - 46 Paras E - F)**

4.2.9. Also, in *NNPC v. SPIFF & ORS* (2021) LPELR-55000(CA) it was held that "A Court is not to delve into extraneous facts in determining a suit. It is the duty of a Court not to indulge in speculation but to act on evidence before it. It has no competence to delve into extraneous facts or to arrive at conclusion on speculation and guess. See: *ASHIRU V. INEC* (2020) 16 NWLR (PT.1751) 416 (PAGES 439-440, PARAS G-D) (SC). To speculate is simply to theorize about a matter envisaging which evidence does not suffice for certain knowledge. See: *ASHIRU V. INEC* (SUPRA)."

4.2.10. In *A.G. FEDERATION V. ABUBAKAR*(2007) 10 NWLR (Pt. 1041) 1 (SC), the Supreme Court held that "it is a breach of the principle of fair hearing for a court to raise an issue suo motu and decide the same without hearing the parties on the issue raised."

4.2.11. We therefore humbly submit that once a court descends into the arena of speculation and imputes motive not canvassed by the parties, it loses the essential attribute of impartiality, thereby vitiating its decision. It is on this ground, inter alia, that we submit that the decision of the learned trial Judge should be dismissed in its entirety for indulgence in speculations against the Appellant.

4.2.12. My Lords it is also most crucial to mention that the learned trial Judge omitted and failed to consider and make findings on a material and weighty allegation raised by the Appellant, namely that the Respondents removed or concealed the page of the consent judgment containing Clause C during the enforcement process (Exhibit AM2), thereby misleading the enforcement machinery of the court. This allegation went to the root of the legality of the enforcement, and the failure of the court to pronounce on it amounts to a

denial of fair hearing. It is settled law that where a court fails to consider material issues raised by a party which could have affected the outcome of the case, the decision is liable to be set aside. In **ATOMATOFA v. ATOMATOFA (2023) LPELR-60523(CA)**, it was held that:

"The position of law is that all Courts except the Supreme Court are duty bound to consider and resolve every genuine issue properly raised before it, for determination. See *Olayemi v. F.H.A. (2023) 3 NWLR (Pt. 1872) 445 (SC)*, *L.G.C. Ltd. v. Stanbic IBTC Bank Plc (No.2) (2022) 14 NWLR (Pt. 1851) 551 (SC)*, *Tourist Co. (Nig.) Ltd. v. Neo Vista Prop. Ltd. (2022) 15 NWLR (Pt. 1853) 317 (SC)*, *Mbaka v. Mbaka (2022) 17 NWLR (Pt. 1860) 531 (SC)*, *NATAALU & ANOR v. MUHAMMAD & ORS (2022) LPELR-57911 (CA)*. Therefore, where a trial Court fails to carry out that basic function, and it proceeds to judgment, leaving out any issue or issues raised by parties, without resolution, a valid case may be made for denial of fair hearing."

Also, in **SET SUCCESS ENTERPRISES & CO LTD v. IBEJU-LEKKI LOCAL GOVERNMENT COUNCIL & ANOR (2021) LPELR-56608(SC)**, the Supreme Court held thus:

"Where a decision of a Court is challenged on the ground that the trial Court failed to properly consider the appellant's case, the appellate Court in the exercise of its primary judicial responsibility, ought to take into account certain fundamental factors: (i) The nature of the evidence before the trial Court or the Court below. (ii) Whether the Court below accepted or rejected any evidence upon the correct perception. (iii) Whether the Court below used the imaginary scale of

justice to weigh the evidence on either side of the divide, and (iv) Whether the Court below appreciated upon the preponderance of evidence which side the scale weighed having regard to the burden of proof. This trite fundamental doctrine has been reiterated in a plethora of formidable authorities. See EGONU VS. EGONU (1978) 11-12 SC 111, AGBONIFO VS. AIWEREOBA (1988) 14 NWLR (pt.70) 325, KIM VS. EMEFO (2001) 4 NWLR (pt. 102) 147, SALAWU VS. MAKINDE (2002) LPELR-12318." **Per IBRAHIM MOHAMMED MUSA SAULAWA, JSC (Pp 13 - 13 Paras B - F).**

Also, in **YUSUF v. STATE (2023) LPELR-61382(CA), Per UCHECHUKWU ONYEMENAM, JCA** held as follows:

"On the duty of Court to pronounce on all issues properly brought before it; the position of law is that all Courts except the Supreme Court are duty bound to consider and resolve every genuine issue properly raised before it, for determination. See Olayemi v. F.H.A. (2023) 3 NWLR (Pt. 1872) 445 (SC); L.G.C. Ltd. v. Stanbic IBTC Bank Plc (No.2) (2022) 14 NWLR (Pt. 1851) 551 (SC); Tourist Co. (Nig.) Ltd. v. Neo Vista Prop. Ltd. (2022) 15 NWLR (Pt. 1853) 317 (SC); Mbaka v. Mbaka (2022) 17 NWLR (Pt. 1860) 531 (SC)." **Per UCHECHUKWU ONYEMENAM, JCA (Pp 25 - 26 Paras F - B)**

4.2.13. We therefore, humbly submit that the learned trial court's failure to address the allegation of concealment or removal of Clause C from Exhibit AM2 is equivalent to stating that the trial court denied the Appellant the opportunity of having his complaint judicially determined, thereby breaching the twin pillars of fair hearing: hearing the party and considering his case.

4.2.14. In sum, My Lords, the cumulative effect of validating an enforcement carried out without notice or opportunity to be heard, imputing improper motive to the Appellant without evidential basis, and failing to consider a material allegation affecting the legality of the enforcement process, constitutes a grave and irredeemable breach of the Appellant's right to fair hearing. Once fair hearing is breached, the decision reached, no matter how well reasoned, cannot stand. See *Onyekwuluje v. Animashaun* (1996) 3 NWLR (Pt. 439) 637 (SC); *Pam v. Mohammed* (2008) 16 NWLR (Pt. 1112) 1 (SC).

4.2.15. We therefore respectfully urge this Honourable Court to resolve Issue Two in favour of the Appellant, set aside the entire decision of the trial court, and hold that the enforcement of the consent judgment was wrongly done.

4.3. ISSUE 3

Whether the judgment of the trial court, delivered outside the period stipulated under Section 294(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), is a nullity in law. (distilled from Ground 7 of the Notice of Appeal).¹

4.3.1. My Lords, the Appellant respectfully submits that the judgment of the learned trial Judge is constitutionally defective and liable to be set aside, having been delivered outside the mandatory period prescribed by Section 294(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). For reference, My Lords, Section 294(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides thus:

“(1) Every court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of

evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof."

- 4.3.2. My Lords, this constitutional provision commands in clear and unambiguous terms that every court shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses. The provision is neither permissive nor directory; it is mandatory and goes to the competence of the court to validly pronounce judgment. Once final addresses are concluded, the jurisdiction of the court to deliver a valid judgment becomes time-bound, and any decision delivered outside the constitutional window is *prima facie* unconstitutional and suspect, particularly where the judgment discloses errors affecting the justice of the case.
- 4.3.3. The Supreme Court has consistently held that the purpose of Section 294(1) is to ensure that judgments are delivered while the facts, evidence, and arguments of counsel remain fresh in the mind of the trial Judge, so as to avoid distortion of facts, improper evaluation of evidence, and miscarriage of justice. In **LEM v. ACHA (2021) LPELR-55795(CA)** it was held that "... the insertion of a provision in the Constitution stipulating a time period within which a Court should deliver its judgment in a case after final address is in recognition of the fact that "human memory is limited by time and space and loses its impressions or knowledge of persons, things, with the passage of time and therefore loss increases with time and pre-occupations" - Ifezue Vs. Mbadugha (1984) 5 SC 79. Thus, where the delay in the delivery of judgment is unreasonably long, it cannot be contested that it will, without more, affect the memory of the trial Judge and his impressions of the facts and evidence led in the matter such that whichever way the decision

goes, it cannot be, and would not be seen to be justice according to law." **Per FATIMA OMORO AKINBAMI, JCA (Pp 17 - 17 Paras D - B)**

See also *Ariori v. Elomo* (1983) 1 SC 13, *Ifeno v. State* (1999) 5 NWLR (Pt. 602) 543 (SC) and *Okonji v. Njokanma* (1999) 14 NWLR (Pt. 638) 250 (SC).

Section 294(5) however provides that for Section 294(1) of the Constitution of the Federal Republic of Nigeria to be effective, party complaining must have suffered a miscarriage of justice by reason thereof.

4.3.4. In the instant case, the warrant of possession was executed on the 7th of March, 2025, pursuant to which the Appellant was forcibly evicted from the premises and his properties, persons and effects were thrown out, while his vehicles were seized and detained by the 2nd Respondent on the same date. Disturbed by this abrupt and allegedly unlawful execution, the Appellant promptly filed an application seeking the nullification of the warrant on the 18th of March, 2025. The said application, together with all accompanying processes and the Respondents' respective processes, was duly argued and adopted by counsel on the 10th of June, 2025.

4.3.5. By virtue of **Section 294(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)**, the learned trial Judge was constitutionally obligated to deliver his ruling within ninety (90) days from the date of adoption of final addresses, which in this case lapsed on or before the 3rd of September, 2025. Regrettably, the ruling was not delivered until the 16th of October, 2025—well beyond the constitutionally prescribed period.

4.3.6. The consequence of this delay was not merely procedural but gravely prejudicial to the Appellant. Having been suddenly dispossessed of his residence and deprived of the use of his vehicles and personal effects, the Appellant suffered significant losses, including reputational embarrassment,

disruption of his business activities, and deprivation of properties essential to his livelihood. This hardship was exacerbated by the fact that, having earlier informed the 1st Respondent of his unavailability in February and acting under the bona fide belief that **Clause C of the Consent Judgment** afforded him time until 31st July, 2025 to vacate the premises, the Appellant had not made alternative residential arrangements. The protracted delay in the delivery of the ruling effectively prolonged the detention of his properties and deepened his financial and personal losses, thereby occasioning a substantial miscarriage of justice.

4.3.7. Also, the delayed judgment of the trial court is replete with substantive errors which clearly demonstrate that the delay occasioned a miscarriage of justice. The learned trial Judge misconstrued Clause C of the Consent Judgment by importing conditions not contained therein, failed to properly evaluate the affidavit evidence before the court, ignored material allegations relating to the enforcement process, and imputed improper motive to the Appellant without any evidentiary basis. These errors go beyond mere technical slips; they strike at the heart of the Appellant's case and strongly suggest that the prolonged delay impaired the trial Judge's proper appreciation of the issues placed before the court.

4.3.8. Although Section 294(5) of the Constitution provides that a judgment shall not be set aside merely because it was delivered outside ninety days unless miscarriage of justice is shown, the Appellant submits that miscarriage of justice has been clearly established on the face of the record. In **ATUNGWU & ANOR v. OCHEKWU (2013) LPELR-20935(SC)**, the Supreme Court in explaining the provisions of Section 294(1) and (5) of the Constitution held that:

"....Section 294(1) of the Constitution of the Federal Republic of Nigeria, 1999. "Every Court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter with duly authenticated copies of the decision within seven days of the delivery thereof." However, in Section 294(5) of the said Constitution it is provided that: "The decision of a Court shall not be set aside or treated as a nullity solely on the ground of non-compliance with the provisions of subsection (1) of this Section, unless the Court exercising jurisdiction by way of appeal or review of that decision is satisfied that the party complaining has suffered a miscarriage of justice by reason thereof" In the light of the foregoing provisions, it must be noted that delay in delivery of Judgment per se, does not lead to a Judgment being vitiated. The delay must occasion a miscarriage of justice to result in such a conclusion. In other words, it has to be established that the delay occasioned a miscarriage of justice in that the trial Judge did not take a proper advantage of having seen or heard the witnesses testify or that he had lost his impressions of the trial due to such inordinate delay. See *AKPAN V. UMOH* (1999) 7 SC (Pt.II) 13." **Per SULEIMAN GALADIMA, JSC (Pp 20 - 21 Paras F - E)**

4.3.9. By virtue of Sections 1(1) and 1(3) of the Constitution, the Constitution is supreme and any decision inconsistent with its provisions is void to the extent of its inconsistency. It is therefore our humble submission that learned trial Judge, with respect, lacked the constitutional competence to deliver a

valid judgment outside the period stipulated by Section 294(1), particularly where the delay resulted in palpable injustice to the Appellant.

4.3.10. The Appellant therefore urges this Honourable Court to resolve this issue in his favour and hold that the judgment of the trial court, having been delivered in violation of Section 294(1) of the Constitution and having occasioned a miscarriage of justice, is a nullity and ought to be set aside in its entirety.

5.0. CONCLUSION

We urge this Honourable Court to set aside the ruling of the learned trial Judge and allow this appeal for the following reasons:

- 5.1. The learned trial Judge erred in law when he misconstrued the clear and unambiguous provisions of Clause C of the Consent Judgment by importing a requirement for documentary proof of an unavoidable situation or cogent and compelling reason, thereby placing an undue and unlawful burden on the Appellant and failing to give effect to the plain intention of the parties as endorsed by the court.
- 5.2. The learned trial Judge erred in law when he upheld the enforcement of the Consent Judgment which was carried out without prior notice to the Appellant or affording him an opportunity to be heard, and further imputed improper motive to the Appellant without evidential basis, in violation of the Appellant's constitutional right to fair hearing as guaranteed under Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- 5.3. The learned trial Judge erred in law and occasioned a miscarriage of justice when he failed to consider and make specific findings on the Appellant's material allegation that Clause C of the Consent Judgment was removed or

concealed during the enforcement process, thereby depriving the court of a full and accurate understanding of the judgment sought to be enforced.

5.4. The learned trial Judge further erred in law when he delivered his ruling outside the constitutionally prescribed period under Section 294(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and the Appellant has shown that the delay occasioned substantial prejudice, including prolonged deprivation of his properties and attendant financial and personal losses.

5.5. Having regard to the affidavit evidence and legal arguments placed before the trial court, the Appellant respectfully submits that the application to set aside the premature and unlawful enforcement of the judgment ought to have been granted alongside all prayers made in the application, and the failure to do so has resulted in a grave miscarriage of justice.

5.6. We therefore urge Your Lordships to allow this appeal, set aside the ruling of the trial court delivered on the 16th of October, 2025, and grant the reliefs sought by the Appellant, together with such further or other Order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

6.0. LIST OF AUTHORITIES

6.1. STATUTES

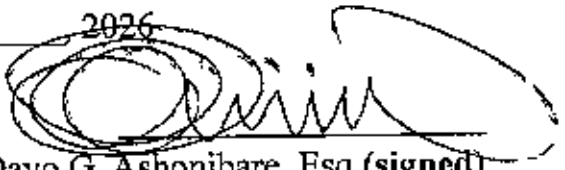
Constitution of the Federal Republic of Nigeria, 1999 (as amended)

6.2. CASE LAW

1. A.G. Federation v. Abubakar (2007) 10 NWLR (Pt. 1041) 1 (SC)
2. Anyaeche & Anor v. Nduka (2017) LPELR-42459 (CA)
3. Ashayi v. APC & Ors (2023) LPELR-61837 (SC)
4. Atungwu & Anor v. Ochekwu (2013) LPELR-20935 (SC)
5. Danladi v. Dangiri & Ors (2014) LPELR-24020 (SC)

6. Edeogu v. Edeogu & Ors (2023) LPELR-60801 (CA)
7. Jorsil Ltd v. Governor of Nasarawa State & Ors (2025) LPELR-82075 (CA)
8. Leedo Presidential Motel Ltd v. Bank of the North Ltd & Anor (1998)
LPELR-1775 (SC)
9. Lem v. Acha (2021) LPELR-55795 (CA)
10. NNPC v. Spiff & Ors (2021) LPELR-55000 (CA)
11. Nweke v. FRN (2019) LPELR-46946 (SC)
12. Okebata v. State (2013) LPELR-22474 (CA)
13. Onyekwuluje v. Animashaun (1996) 3 NWLR (Pt. 439) 637 (SC)
14. PAM v. Mohammed (2008) 16 NWLR (Pt. 1112) 1 (SC)
15. Saipem Contracting (Nig.) Ltd & Ors v. FIRS & Ors (2019) 5 NWLR (Pt. 1664) 78
16. Set Success Enterprises & Co. Ltd v. Ibeju-Lekki Local Government
Council & Anor (2021) LPELR-56608 (SC)
17. Tsokwa Oil Marketing Co. Ltd v. Bon Nigeria Ltd (2002) 11 NWLR (Pt. 777) 163
18. Uchendu v. State (2015) LPELR-25602 (CA)
19. Vulcan Gases Ltd v. G.F. Industries A.G. (2001) 9 NWLR (Pt. 719) 610 (SC)
20. Yusuf v. State (2023) LPELR-61382 (CA)

Dated this _____ day of _____, 2026

✓ 
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